SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY
WRIT APPEAL NO. 1032 OF 2006

BETWEEN

K. Issaku & others

.....Appellants

And

The Superintendent of Police,
Vigilance and Enforcement,
Rajahmundry & others.

.....Respondents

Counsel for the appellants : Shri A.V. Sesha Sai

Dated: 13.10.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 31.01.2006 passed by the learned Single Judge, who declined to entertain the appellants' prayer for quashing proceedings dated 07.08.2005 issued by Bhimavaram Consumer's Co-operative Central Stores Limited (respondent No.6), whereby they were suspended under Bye-law No.34 (b)(g).

A perusal of the record shows that on receipt of communication sent by Revenue Divisional Officer, Narsapur that the salesmen engaged by respondent No.6 at various fair price shops were guilty of committing various irregularities, respondent No.6 passed order dated 7-8-2005 for suspension of the appellants. Writ Petition No.18387 of 2005 filed by the appellants for quashing order dated 7-8-2005 by describing it as an order terminating their services was dismissed by the learned Single Judge with the following observations:

> "At the outset, it is to be noted that admittedly the petitioners are not fair price shop dealers and they are not holding any authorizations, but they were only engaged by the 6th respondent, which is a Society registered under the Act. May be that the services of the petitioners were disengaged consequent to the directions of the 4th respondent-Revenue Divisional Officer, but the said action is in terms of the Bye-laws of the 6th respondent-Society. In the circumstances, even if the petitioners are aggrieved, it is open to them to work out the appropriate remedy available under law, but they cannot seek redressal by invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. On that ground alone, the writ petition is liable to be dismissed.
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> The submission of the learned counsel for the petitioners to permit the petitioners to

participate in the enquiry initiated against the 6th respondent as well as the other fair price shop dealers cannot be accepted, since the petitioners, who are admittedly not holding any authorization under the control order, have nothing to do with the enquiry initiated under the provisions of the A.P. Public Distribution Control Order, 2001.

Accordingly, the writ petition is dismissed. No costs. However, it is made clear that this shall not preclude the petitioners to work out the appropriate remedy as available under law for redressal of their grievance, if any."

Shri A.V. Sesha Sai, learned counsel for the appellants, argued that the order under challenge should be declared as vitiated by an error of law and proceedings dated 7-8-2005 issued by respondent No.6 should be quashed because the same are founded on show cause notices dated 21-5-2005 issued by Revenue Divisional Officer, Narsapur. Learned counsel submitted that even though the final action has been taken by respondent No.6, the same is liable to be nullified on the ground of violation of the rules of natural justice and non-application of mind because the management of respondent No.6 acted under the dictates of Revenue Divisional Officer, Narsapur.

We have considered the submissions of the learned counsel, but have not felt persuaded to agree with him. Rather, we are convinced that the view expressed by the learned Single Judge on the tenability of the appellants' prayer under Article 226 of the Constitution of India does not suffer from any legal infirmity. In our opinion, the learned Single Judge has rightly observed that the appellants can challenge the action of the management of the society by availing appropriate legal remedy under the Andhra Pradesh Co-operative Societies Act, 1964 and, therefore, the writ petition filed by them under Article 226 of the Constitution of India is not maintainable.

We may add that apart from the remedy available to them under the Andhra Pradesh Co-operative Societies Act, 1964, the appellants can avail remedy under the Andhra Pradesh Shops and Establishments Act, 1988.

The rule that the High Court will not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner is well-settled. In **A.V. Venkateshwaran v. R.S. Wadhwani**[1], the Constitution Bench of the Supreme Court, while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition, but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

" The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or
non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[2], another Constitution Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[3], the Supreme Court reiterated the rule of alternative remedy in the following words:

> "When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], the Supreme Court stated the rule of alternative remedy in the following words:

> " Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3) (a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226.

In **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14] the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

The appellants have not shown that their case falls under either of the exceptions enumerated in **Harbanslal Sahnia**'s case (supra). Therefore, we do not find any valid ground or justification to upset the order under challenge and accept the prayer of the appellants for quashing order dated 7.8.2005 passed by respondent No.6.

For the reasons mentioned above, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.2222 of 2006 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

13.10.2006
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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] (1983) 2 SCC 433
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] (1975) 4 SCC 378

[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216
[13] (2003) 2 SCC 107
[14] (2004) 3 SCC 553